

## **REMARKS/ARGUMENTS**

Claims 1-3, 6, 7, 9-21, 44-46, 83-85, and 88-97 are presented for the Examiner's consideration. Claims 4, 5, 8, 22, 26, 47, 53-82, 86, and 87 were previously withdrawn and claims 27-43 and 48-52 were previously canceled. Independent claims 1, 17, 44, and 83 are amended to clarify the claimed subject matter. Pursuant to 37 C.F.R. § 1.116, reconsideration of the present application in view of the following remarks is respectfully requested.

### **Rejections Under 35 U.S.C. § 103(a)**

Sprenigard-Eichel does not teach or suggest each and every element of the claimed invention.

By way of the Office Action mailed May 26, 2009, the Examiner rejects claims 1-3, 6-7, 9-21, 44-46, 83-85, and 88-97 under 35 U.S.C. § 103(a) as allegedly being obvious to one of ordinary skill in the art at the time the invention was made and thus unpatentable over WO 01/60305 to Sprenigard-Eichel et al. (hereinafter "Sprenigard-Eichel"). This rejection is respectfully **traversed** to the extent that it may apply to the presently presented claims.

In order to establish a *prima facie* case of obviousness, three basic criteria must be met: (1) there must be some suggestion or motivation, either in the references themselves or in the knowledge generally available to one of ordinary skill in the art, to modify the reference or to combine reference teachings; (2) there must be a reasonable expectation of success; and (3) the prior art reference (or references when combined) must teach or suggest all the claim limitations. MPEP §2143. The application of the "teaching, suggestion, or motivation" (TSM) test is not "rigid." However, "there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness . . . ." *KSR Int'l Co. v. Teleflex Inc.*, 127 S. Ct. 1727, 82 USPQ2d 1385, 1396 (2007) (quoting *In re Kahn*, 441 F.3d 977, 988, 78 USPQ2d 1329, 1336 (Fed. Cir. 2006)) (emphasis added).

Spregard-Eichel is directed to an absorbent article with a thermal cell. A thermal cell actuator is included in what is in other respects a standard diaper. Independent claim 1 of the present application is directed to an absorbent composition including, *inter alia*, a water-swellaable, water-insoluble absorbent material and a cooling compound intermixed with the absorbent material, wherein the cooling compound has an endothermic effect, and wherein the absorbent composition exhibits certain specific values. First, Spregard-Eichel does not disclose, teach, or suggest an absorbent composition including an absorbent material and a cooling compound intermixed with the absorbent material. Spregard-Eichel's absorbent core 28 and thermal cell actuator 603 are separate elements that together do not make an absorbent composition. Second, if Spregard-Eichel's absorbent core and thermal cell actuator were together to be considered an absorbent composition, there is no evidence that such absorbent composition would meet the performance requirements of claim 1. In other words, Spregard-Eichel's elements are either separate and do not disclose, teach, or suggest an absorbent composition, or those two elements are combined and do not meet the requirements of claim 1. Either way, Spregard-Eichel does not disclose, teach, or suggest the subject matter of claim 1 of the present application.

Similarly, any absorbent capacity disclosed, taught, or suggested by Spregard-Eichel through its incorporated references does not relate to the absorbent capacity of an absorbent composition as claimed in the present application, but only relates to the absorbent capacities of generally standard absorbent cores. The Examiner in the Response to Arguments section of the May 26, 2009 Office Action tries to refute this point by stating that the absorbent capacity claims of the present application are "directed to the absorbent material, not the absorbent composition." Claim 1, for example, clearly states "the absorbent *composition* exhibits an absorbent capacity of at least 10 grams of 0.9 wt% NaCl saline per gram of the absorbent *composition*." It is unclear why the Examiner is of the opinion that this claim is only directed to an absorbent material, when the claim is directed to an absorbent *composition* that includes both an absorbent material and a cooling compound. Again, Spregard-Eichel cannot disclose, teach, or suggest this claim because Spregard-Eichel does not envision an absorbent composition as defined in the present application.

Further, the Examiner states that "the absorbent material and cooling compound may be acidic or basic" without a relevant citation or a reference. Because Sprengard-Eichel and its incorporated Weisman (4,610,678) do not anywhere describe the concepts of acidic or basic or pH, it appears that this statement is conjecture on the part of the Examiner. There is no discussion whatever regarding the pH of a cooling compound in the cited references. The Examiner bases much of the rejections on modifying ranges "based on the general conditions being disclosed in the prior art" without providing any prior art that discloses such "general conditions." The Examiner's position appears to be the very position rejected by the court in *In re Antonie* 195 USPQ 6 (CCPA 1977). In particular, the court noted that an assertion that it would always be obvious to one of ordinary skill in the art to try varying every parameter of a system in order to optimize the effectiveness of the system is improper "if there is no evidence in the record that the prior art recognized that particular parameter affected the result" (*Id. at 8 (emphasis added)*). Thus, the court made it clear that the recognition of a particular parameter as a general condition must come from the cited references, in this case, Sprengard-Eichel and Weisman.

These arguments relative to optimizing ranges, for example, apply equally to dependent claims 2, 3, 6, 7, 9-16, 18-21, 45, 46, 84, 85, and 88-97. The Examiner has made such assertions of optimizing pH ranges and temperature reductions, for example, without providing a *prima facie* case that such ranges and reductions are known in the art. "[R]ejections on obviousness grounds cannot be sustained by mere conclusory statements; instead, there must be some articulated reasoning with some rational underpinning to support the legal conclusion of obviousness." (*In re Kahn*, 441 F. 3d 977, 988 (CA Fed. 2006), cited with approval in *KSR Int'l v. Teleflex Inc.*, 127 S. Ct. 1727, 1740-41, 82 USPQ2d 1385, 1396 (2007).)

Likewise, claim 17 is directed to an absorbent composition including a water-swellaable, water-insoluble acidic absorbent material; and a cooling compound intermixed with the absorbent material, wherein the cooling compound has an endothermic effect and is a basic compound capable of neutralizing the acidic absorbent material, wherein the absorbent composition exhibits an absorbent capacity of at least 10 grams of 0.9 wt% NaCl saline per gram of the absorbent composition and a cooling effect of at least a 2°C reduction in temperature of at least a portion of the absorbent composition. Contrary to the Examiner's claim, Sprengard-Eichel does not disclose, teach, or suggest an absorbent

composition including a cooling compound, wherein the cooling compound has an endothermic effect and is a basic compound capable of neutralizing the acidic absorbent material, wherein the absorbent composition exhibits an absorbent capacity of at least 10 grams of 0.9 wt% NaCl saline per gram of the absorbent composition and a cooling effect of at least a 2°C reduction in temperature of at least a portion of the absorbent composition.

Claim 44 is directed to a method for producing an absorbent composition capable of exhibiting a cooling effect, the method including selecting a water-swellaable, water-insoluble absorbent material; selecting a cooling compound having an endothermic effect; and intermixing the absorbent material and the cooling compound to form the absorbent composition such that the absorbent composition exhibits an absorbent capacity of at least 10 grams of 0.9 wt% NaCl saline per gram of the absorbent composition and a cooling effect of at least a 2°C reduction in temperature of at least a portion of the absorbent composition. Contrary to the Examiner's claim, Sprengard-Eichel does not disclose, teach, or suggest combining the absorbent material and the cooling compound to form the absorbent composition such that the absorbent composition exhibits an absorbent capacity of at least 10 grams of 0.9 wt% NaCl saline per gram of the absorbent composition and a cooling effect of at least a 2°C reduction in temperature of at least a portion of the absorbent composition.

Claim 83 is directed to an absorbent composition including a superabsorbent material; and a sufficient amount of cooling compound intermixed with the absorbent material such that the absorbent composition is adapted to provide a cooling effect in at least a portion of the composition while absorbing aqueous liquid. Contrary to the Examiner's claim, Sprengard-Eichel does not disclose, teach, or suggest a sufficient amount of cooling compound such that the absorbent composition is adapted to provide a cooling effect in at least a portion of the composition while absorbing aqueous liquid.

In addition, claims 2, 3, 6, 7, 9-16, 18-21, 45, 46, 84, 85, and 88-97 are dependent claims that depend from an allowable independent claim, and are thus allowable themselves for the reasons stated above with respect to independent claims 1, 17, 44, and 83.

In view of the remarks set forth in this section, Applicant respectfully submits that claims 1-3, 6, 7, 9-21, 44-46, 83-85, and 88-97 are in condition for allowance and respectfully requests favorable consideration and the timely allowance of those claims.

For the reasons stated above, it is respectfully submitted that all of the presently presented claims are in form for allowance.

Please charge any prosecutorial fees which are due to Kimberly-Clark Worldwide, Inc. deposit account number 11-0875.

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#### **ELECTRONIC FILING CERTIFICATE**

I hereby certify that this correspondence and all attachments and any fee(s) are being electronically transmitted via the internet to the United States Patent and Trademark Office using the Electronic Filing System on August 26, 2009.

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